

1 CHRISTOPHER CHIOU
2 Acting United States Attorney
3 District of Nevada
4 Nevada Bar No. 14853

5 MARCELO ILLARMO, MABN 670079
6 Special Assistant United States Attorney
7 160 Spear Street, Suite 800
8 San Francisco, California 94105
Telephone: (510) 970-4822
Facsimile: (415) 744-0134
E-Mail: marcelo.illarmo@ssa.gov

9 Attorneys for Defendant

10 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

11 JOSE N. AVILA)
12 Plaintiff,)
13 v.) Case No.: 2:21-cv-00546-VCF
14 KILOLO KIJAKAZI,¹) UNOPPOSED MOTION FOR EXTENSION
15 Acting Commissioner of Social Security,) OF TIME (SECOND REQUEST)
16 Defendant.)

17
18 Defendant, Andrew Saul, Commissioner of Social Security (the “Commissioner”), by and
19 through his undersigned attorneys, hereby moves for a 60-day extension of time to file Defendant’s
20 Electronic Certified Administrative Record and Answer to Plaintiff’s Complaint. Defendant’s
21 Electronic Certified Administrative Record and Answer to Plaintiff’s Complaint are due to be filed
22 by August 13, 2021. This is the Commissioner’s first request for an extension.

23
24 ¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to
25 Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi should be substituted, therefore,
26 for Andrew Saul as the defendant in this suit. No further action need be taken to continue this suit
by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 Defendant makes this request in good faith and for good cause, because the CAR, which
2 must be filed with the Answer and is necessary to adjudicate the case, is not yet available. The
3 public health emergency pandemic caused by COVID-19 has significantly impacted operations in
4 the Social Security Administration's Office of Appellate Operations (OAO) in Falls Church,
5 Virginia, which is responsible for producing the CAR that must be filed with the Answer, per 42
6 U.S.C. §§ 405(g) and (h). As detailed in the attached declaration from Jebby Rasputnis, Executive
7 Director of the OAO, beginning mid-March 2020, OAO restricted physical access to the Falls
8 Church building, which impacted the production of CARs because physical access was previously
9 required to produce CARs. OAO has since developed and employed a new business process to
10 produce CARs. Much of the difficulty in producing CARs stemmed from the old process of
11 transmitting hearing recordings to vendors for transcription, how the vendors transcribed the
12 recordings, and how the vendors provided the completed transcripts to OAO. OAO changed this
13 process by reworking how the audio files are submitted, seeking additional vendor capacity, and
14 increasing in-house transcription capacity. With these changes, OAO is now able to produce more
15 than 700 transcripts a week, a significant increase over the pre-COVID-19 average of 300–400
16 hearing transcripts a week.

17 Despite these improvements, OAO still faces a significant backlog of cases due to the
18 combined effects of pandemic-related disruption and a marked increase in district court filings (up
19 almost 800 cases per month, a 54% increase). Overall, the timeframe for delivering a CAR in an
20 individual case has improved, and the current average processing time is 139 days. Because of this,
21 OAO is making progress in its backlog of cases. At the end of January 2021, OAO had 11,109
22 pending cases. As of June 8, 2021, OAO had 6,927 pending cases, representing a decrease in our
23 backlog of more than 4,182 cases over the last four months. OAO continues to work on increasing
24 productivity by collaborating with our vendors and searching out and utilizing technological
25 enhancements. Defendant asks this Court for its continued patience as OAO works to increase its
26 efficiency and production of CARs, reduce the current backlog, and address rising court case

1 filings. Counsel for Defendant further states that the Office of General Counsel (OGC) is
2 monitoring receipt of transcripts on a daily basis and is committed to filing Answers as soon as
3 practicable upon receipt and review of the administrative records.

4 Given the volume of pending cases, Defendant requests an extension in which to respond to
5 the Complaint until October 12, 2021. If Defendant is unable to produce the certified administrative
6 record necessary to file an Answer in accordance with this Order, Defendant shall request an
7 additional extension prior to the due date.

8 The undersigned affirms that opposing counsel does not object to the requested extension.

9 It is therefore respectfully requested that Defendant be granted an extension of time to file
10 the CAR and answer to Plaintiff's Complaint, through and including October 12, 2021.

11
12
13 Dated: August 4, 2021

14 Respectfully submitted

15 CHRISTOPHER CHIOU
16 Acting United States Attorney

17 /s/ Marcelo Illarmo
18 MARCELO ILLARMO
19 Special Assistant United States Attorney

20 IT IS SO ORDERED:

21 
22 UNITED STATES MAGISTRATE JUDGE
23 DATED: _____
24 8-4-2021
25
26

CERTIFICATE OF SERVICE

I, Marcelo Illarmo, certify that the following individual(s) were served with a copy of the foregoing document on the date, and via the method of service, identified below:

CM/ECF:

Gerald Morris Welt gmwesq@weltlaw.com
Marc V Kalagian marc.kalagian@rksslaw.com

Attorneys for Plaintiff

Dated August 4, 2021

/s/ Marcelo Illarmo
MARCELO ILLARMO
Special Assistant United States Attorney